IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 254 of 2002
With
CIVIL APPLICATION No. 4008 of 2002
In
APPEAL FROM ORDER No. 254 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD ELECTRICITY CO. LTD.
Versus
ASHOK SPINNING INDUSTRY THRO' PROP. CHINUBHAI K JOSHI

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Appearance :
MR KB PUJARA for Appellant.
MR RC JANI for Respondent.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 08/11/2006

ORAL JUDGMENT

The present appeal has been filed against an interlocutory order passed below Exh.5, 32 and 35 in Civil Suit No.141/2002. The respondent herein is the original plaintiff of the aforesaid suit. The aforesaid suit is filed by the plaintiff on the ground that the plaintiff is the consumer of AEC having Consumer No.262995 of the AEC Zone. Case of the plaintiff is that the plaintiff is a spinning unit and the defendant company has sanctioned 140 HP to the plaintiff and the defendant has sanctioned 100 demand contract to the plaintiff. The case of the plaintiff is that it is paying the consumption charges regularly and it has not indulged in any illegalities. The case of the plaintiff is that the meter installed by the defendant–company is not functioning appropriately and the same is defective and it is not recording correct consumption. It is the case of the plaintiff that the plaintiff has also made a complaint to the Electric Inspector requesting him to decide the matter under Sections 24 and 26 (6) of the Indian Electricity Act. It is also the case of the plaintiff that the meter in question is running fast and is jumping every month and exorbitant bill is received by the plaintiff every month.

In the aforesaid suit, the plaintiff has averred that cause of action for filing the suit arose when the plaintiff received bill to the tune of Rs.46,03,540/- by way of regular bill. The plaintiff has also averred in the plaint that in fact the plaintiff is entitled to recover Rs.20 Lacs from the defendant company. In the aforesaid suit, decree for permanent injunction is sought for against defendant company by restraining the defendant from recovering the money from the plaintiff towards the bill in question. A declaration is also sought for to the effect that the defendant is not entitled to recover Rs.46,03,540/-. It is also prayed that direction may be given to the effect that Electric Inspector should decide the case under Section 26 (6) of the Act. Prayer is also made for refund

of Rs.20 Lacs.

Said suit is resisted by the present appellant company on various grounds.

It seems that electric connection of the plaintiff was disconnected by the company on the ground that bills subsequent to the filing of the suit were not paid by the plaintiff. In that view of the matter, the present plaintiff gave a purshis at Exh.35 in the suit, wherein plaintiff has shown willingness to pay Rs.14,50,000/-, which according to the plaintiff covers the dues from the date of filing of the suit. Learned advocate for the appellant company (defendant in the suit) had agreed before the Court that order of reconnection may be passed by asking the plaintiff to make the payment. As per the endorsement made by the advocate on the purshis, the plaintiff was required to make payment of Rs.14,50,000/-. It is also mentioned in the endorsement that previous dues of Rs.46 Lacs is not included in the said amount. It is also the endorsement that the plaintiff may be directed to pay the remaining amount by way of two installments.

While disposing main injunction application Exh.5, learned trial Judge took into account the purshis given by the plaintiff at Exh.35. The appellant, who is the original defendant in the suit, was directed to restore the electricity connection on payment of Rs.5.50 Lacs and other reconnection charges. The plaintiff was also directed to make payment of installments as agreed by the plaintiff in its purshis at Exh.35 with a further rider that it will pay the future dues regularly. Learned trial Judge also permitted the plaintiff to install the new meter as per the rules and regulations of the company.

It is the aforesaid order passed mainly below Exh.5, which is impugned in this appeal at the instance of the original defendant of the suit.

So far as the question about installation of new meter is concerned, the same does not survive as it is already installed and by a separate order passed today in Appeal from Order No.244/2002, the respondent herein is permitted to withdraw aforesaid appeal.

Mr.Pujara, learned advocate appearing for the appellant company submitted that at the time of deciding Exh.5 application, learned trial Judge has not considered the question about prima facie case and balance of convenience in its proper perspective. It is also submitted that at the time of deciding injunction application, learned trial Judge has mainly considered the purshis given by the plaintiff and endorsement of the learned advocate of the appellant company. He further submitted that the amount of bills, which was considered by learned trial Judge was in connection with bills, which were served upon the plaintiff after filing of the suit. It is also submitted that so far as question of reconnection is concerned, in view of the compliance of the order passed by learned Judge electric connection is reconnected by the appellant company. He further submitted that learned trial Judge should not have decided notice of motion application solely on the basis of the purshis of the plaintiff or the endorsement made by the learned advocate of the defendant – company, as the same was in connection with the bills issued after filing of the suit. He submitted that the trial Court should have decided injunction application on merits. It is further submitted that from the impugned order, it is clear that the learned trial Judge has given more weightage to the purshis given by the plaintiff at the time of deciding the question about reconnection. He also submitted that so far

as endorsement of learned advocate of the appellant company is concerned, it was made only as an interim arrangement till Exh.5 application is decided, as the plaintiff was required to pay the amount in connection with the bills for the period subsequent to the filing of the suit.

Learned trial Judge was required to decide whether injunction is required to be granted or whether there is any prima facie case in favour of the plaintiff, as per the prayer in the suit and as per Exh.5 application, which was in connection period prior to the filing of the suit.

Mr.Pujara, learned advocate for the appellant submitted that in the injunction order learned trial Judge has not said anything whether the demand of the appellant company was justified or not and whether absolute injunction could have been granted without considering the demand of alleged outstanding dues of the company.

Mr.Jani, learned advocate for the respondent also submitted that he has no objection if Exh.5 application is heard *de-novo*, so far as question about alleged dues of the defendant prior to the filing of the suit is concerned. He, however, submitted that so far as earlier period is concerned, the plaintiff has a good case and, therefore, injunction was required to be granted for that period.

After hearing both the learned counsel and after perusing the voluminous record, I am of the opinion that so far as application of the applicant at Exh.5 is concerned, the same is required to be heard *de-novo* after considering the arguments of learned advocates for both the sides. Since learned trial Judge has not addressed herself on the merits of Exh.5 application and since question of prima facie case as well as the

balance of convenience is not considered appropriately, the matter is required to be sent back for hearing of Exh.5 application *de-novo*. It is for the learned trial Judge to decide whether the plaintiff has got any prima facie case in connection with the prayer made in the suit and Exh.5 application. The entire question of deciding Exh.5 application is left to the learned Judge after considering the prima facie material and evidence on record. Exh.5 application is required to be decided afresh, as in the impugned order more weightage is given to the purshis at Exh.35. It is clarified that on merits of Exh.5 application, this Court has not expressed any opinion in any manner and it is for the concerned Court to decide the same after considering the facts and circumstances of the case and it is needless to say that the same will be decided as per law.

Since the electricity connection is already installed, in view of the payment made by the plaintiff, that position to continue till Exh.5 application is decided afresh by the learned Judge, meaning thereby that the defendant shall not take any action for disconnecting the electric connection till Exh.5 application is decided afresh. It is also clarified that while deciding Exh.5 application, the fact that reconnection is made by the company may not be treated as a favourable circumstance in favour of the plaintiff and, ultimately, it is for the Court to decide the question of prima facie case and balance of convenience as well as the question about reconnection as per law. Learned trial Judge may take appropriate decision on Exh.5 application as indicated herein above on or before 15th December, 2006. Both the learned advocates have assured the Court that their respective clients will cooperate with early disposal of the notice of motion application by the aforesaid date.

In view of above order, this Appeal from Order is allowed with no order as to costs. Learned trial Judge is directed to dispose of Exh.5

application in light of the observations made herein above.

Office is directed to send writ of this order to the trial Court forthwith.

In view of above order in main Appeal from Order, no order on Civil Application No.4008/2002.

(P.B.Majmudar, J.)

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